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96-87-1537

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Daily Newspaper/Radio Cross-Ownership  
FCC Waiver Policy

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MM Docket No. 96-197

To: The Commission

**COMMENTS OF THE NATIONAL NEWSPAPER ASSOCIATION**

The National Newspaper Association (NNA), hereby submits its comments responding to the Federal Communications Commission's Notice of Inquiry, FCC 96-381, issued October 1, 1996, seeking public comment on its possible revisions to its waiver policy for daily newspaper/radio station cross-ownership restriction.

In summary, NNA believes the Commission is correct in seeking to loosen its waiver policy for the reasons set forth below and believes it is in the public interest to allow daily newspapers to fully participate in the acquisition of radio properties, so long as the public is provided a reasonable opportunity to raise any existing issues of concern through a public notice requirement. Such notice, appearing in the local community of interest, will ideally provide interested parties a fair opportunity to present any relevant information to the Commission that

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would impact its decision to grant the ownership application and would place the burden on the applicant, whether the applicant is a newspaper owner or is controlled by another enterprise, to demonstrate its ability to serve the public interest and foster competition at the local level.

NNA urges the Commission to broaden its existing waiver policy after providing a reasonable public notice time period for its applicants, and consider the complete elimination of the cross ownership restrictions in the near future.

### **STATEMENT OF INTEREST**

The National Newspaper Association, founded in 1885, is the longest-standing association dedicated to the community press. Its present membership of 4,000 titles includes more than a third of the daily newspapers and a majority of the weekly newspapers in the United States. It also is open to college newspapers and community newspapers outside the United States. NNA represents newspapers before all branches of government.

NNA's membership includes members with a long history in providing a variety of communications services to their local communities both in their newspaper operations and through other forms of media, including broadcasting services, and recently, Internet-based services. NNA's daily and weekly newspaper members may compete directly for local advertising revenue, news stories, and market share, depending on the community. NNA's daily newspaper members are currently in the anomalous situation where they are restricted from providing radio services to their local communities, unlike their non-daily counterparts. NNA hereby seeks a liberal waiver policy in order to begin to level the playing field among its members to ensure each may participate fully in the competitive media marketplace to provide the broadest array of services to the public at the local level.

## **BACKGROUND**

The Commission issued its Notice of Inquiry October 1, seeking public comments on its waiver policy for lifting the restriction against the common ownership of a commercial broadcast station and a daily newspaper in the same community. There are no such ownership restrictions for weekly newspapers. The existing restriction is meant to ensure "diversity of voices in the marketplace" and economic competition in terms of advertising revenue and multiple media outlets, avoiding undue concentration of ownership at the local level. As the Commission points out, "the newspaper/broadcast cross-ownership rule rests on the twin goals of promoting diversity of viewpoint and economic competition. Of these two goals, the Commission made it clear when adopting the rule that fostering diverse viewpoints from antagonistic sources is at the heart of its licensing responsibility." FCC 96-381 NOI, paragraph 3.

In adopting the restriction, the FCC concluded that granting a broadcast license to an entity in the same community in which that entity also publishes a daily newspaper would harm local diversity. NOI at par. 3.

However, in certain instances, the FCC has waived its restriction. The FCC has established the following criteria for a waiver: the inability to sell the radio station; the sale of the station would be at an artificially depressed price; separate ownership and operation of the newspaper and the radio station could not be supported in the locality; and finally, if the purpose of the rule would be "disserved by its application." NOI at par. 3, 4.

The Commission also has waived its cross ownership restrictions in past instances where it has determined the application of the rule would be "unduly harsh," and on a temporary basis when divestiture is required but time is necessary to accomplish it. Permanent waivers have been

granted in two instances involving television stations. NOI at par. 4. Additionally, there are many instances across the country of "grandfathered" radio and daily newspaper combinations that were in existence before the restriction came into effect and have continued to operate for the past two decades. Now the Commission is seeking public guidance on loosening the waiver policy even further to allow daily newspapers to buy radio stations in their markets more easily.

### **DISCUSSION**

Specifically, the Commission seeks comments on how "diversity" in a marketplace should be defined, whether it should include television and other non-broadcast "voices," whether there should be a numerical limit on the number of stations owned, what should be the geographical context for the "market," and what other objective criteria it should apply for a more liberal waiver policy. NOI at par. 10.

NNA believes the waiver should operate through a presumption in favor of the applicant seeking to acquire the license, rather than through a numerical or market size definition for the reasons and in the manner set forth below.

#### **I. Grandfathered Markets Demonstrate That Radio/Daily Newspaper Combinations Have Not Produced the Threats Envisioned by the Commission in 1975**

NNA has added attachments by newspaper publishers whose newspaper operations are in a "grandfathered" market, where the daily and local radio station ownership combination existed before the Commission's cross-ownership restriction took effect. *See Attachments A-C.* Two newspaper publishers have provided to the Commission their personal experience as non-daily newspapers competing in a grandfathered market. Each has demonstrated the ability to compete

effectively for advertising revenue, marketshare, and in their news coverage, despite an existing radio/daily newspaper combination in their market.

Roy J. Eaton, publisher of the *Wise County Messenger* in Decatur Texas, a twice-weekly newspaper with a paid circulation of 5,800, faces two grandfathered combinations in his market, the Dallas/Fort Worth area. Attachment A. Eaton is also currently serving as the Chairman of the National Newspaper Association. The grandfathered combinations include the daily *Fort Worth Star-Telegram*, with a circulation of more than 300,000 and Radio Station WBAP, and *The Dallas Morning News*, with a circulation of more than 500,000 and WFAA-TV. Both newspapers have been operating for over 75 years.

Eaton has been the publisher of the *Wise County Messenger* for 24 years. In his attached statement, Eaton states that he observes a great deal of diversity both in news coverage and in advertising competition in the Dallas/Fort Worth market.

Eaton also points to dozens of general-interest newspapers, special interest newspapers, and over 50 radio stations that are in competition for advertising in his market. He observes a diversity of editorial opinion between the commonly-owned newspapers and radio stations, and a "multitude of diverse editorial voices" in his locale.

Further, as a small weekly newspaper publisher competing in this market, he personally does not believe lifting the cross ownership restriction would have any impact on the "diversity of voices, opinion, culture, news stories." Attachment A.

"Because the Dallas-Fort Worth ADI is one of the largest in the nation, the competition for news stories and advertising dollars between very diverse media outlets--both print and

broadcast--is strong. It is virtually impossible that this competition and diversity of voices would change should the restriction against cross ownership be lifted." Attachment A.

Lifting the restriction at this time would not harm economic competition either, according to a second newspaper publisher, Jeff M. David, currently serving as NNA's Government Relations Chairman, and publisher of the twice-weekly newspaper, the *Denham Springs News*, with a paid circulation of 10,000, in Denham Springs, Louisiana. *See, Attachment B.*

David is in the Metropolitan Statistical Area (MSA) of Baton Rouge, Louisiana. In his area, East Baton Rouge, there is a large metropolitan daily newspaper, the *Advocate*, owned by the Manship family, that recently were licensees for both FM and AM stations since WWII. The Manships currently are licensees for VHF Channel 2, the ABC affiliate in the ADI. David states there is another financially viable weekly in the MSA, the *Gonzales Weekly*, in addition to numerous radio stations. He believes the *Advocate* and its broadcasting side have often competed for the same advertising and are separately managed. Attachment B.

A third publisher, Avis G. Tucker, owns both the daily newspaper and the radio station license. *See, Attachment C.* Tucker is the President and owner of *The Daily Star Journal*, a daily newspaper with a circulation of 5,100, owned by the Tucker family since 1947, covering Johnson County Missouri. She has also owned Johnson County Broadcasters (station KOKO) with an approximate reach of 42,000 since 1960. Tucker states that the two corporations operate separately, having separate sales personnel, billing and accounting, and no advertising is done in combination. In fact, the radio station and daily newspaper are in competition for advertising. Attachment C.

NNA concludes that daily newspaper/radio station combinations, as exemplified by grandfathered markets, twenty-two years later have not proven to present the widespread anticompetitive practices nor the vacuum of editorial opinion as initially envisioned by the Commission when it crafted its ownership restrictions.

## **II. Today's Market Conditions Are Dramatically Different than 1975 When the Restrictions Went into Effect**

Clearly, current market conditions are different from when the restriction went into effect over twenty years ago. "New" media such as cable, satellite services, telephone service providers seeking to provide content, the flourishing Internet, a proliferation of radio stations and the dramatic growth of direct mail, as well as a wide variety of news organs including weekly newspapers and various special interest publications are thriving across the country. Restrictions against cross ownership are no longer as critical today due to this proliferation of voices and media outlets in the marketplace. Additionally, it is important to note that other media that directly compete with newspapers, do not face the same ownership constraints. The definition of "diversity" should be reexamined and defined in a broader context by the Commission--not in the traditional 1970's print/broadcasting dichotomy.

The ability of a daily newspaper to purchase the local radio station may in fact bolster and strengthen the static radio marketplace of today which faces a variety of rival services, including new services such as Internet-based audio services. As Mr. David states in his statement, "I do not personally believe that lifting the restriction on newspaper ownership of broadcast properties in the Baton Rouge MSA would rescue either a failing newspaper or a failing broadcast property. As a practical matter, the only impact I would expect at this point is a possible increase in value

of local broadcast properties by introducing a possible new bidder, the newspaper, into the broadcasting business to a larger degree than already exists." Attachment B.

### **III. The Commission Should Expand and Strengthen Its Existing Public Notice**

#### **Requirements for the Waiver Applicant**

Arguably, there may be rare instances in which concentration of ownership in a particular market may lead to undue market influence, the domination of advertising revenue by a single entity, and may threaten the "twin" goals enunciated by the Commission. NOI at par. 3.

Because of that small but existing threat, NNA does not believe at this time that lifting the restriction without warning to the local community will serve the public interest. In order to inform those who may not believe it is time to lift the ownership restriction in their local community, NNA believes a local public notice requirement in the local newspaper as already required by the Commission in sections 73.3580, 73.3594 of its rules, should be examined closely and bolstered to enhance the notice requirements for local communities. Such a public notice would occur as in other transfer applications, requiring notice to appear in a newspaper of general circulation published in the community in which the station is located or proposed to be located. The Commission should recognize that in many communities the official newspaper of record is a weekly newspaper or a specialty newspaper devoted entirely to legal and business transactions. spaper of general circulation than in the weekly newspaper published in the community. It would be advisable to require such notice in all initial ownership transactions involving both radio and newspaper combinations, and ensure applications for transfer of control, or other amendments are considered "major" amendments subject to the notice requirement. 47 C.F.R. Ch. I sections 73.3580, 73.3594.

The applicant seeking a waiver of the rule would be expected to file a newspaper public notice in order to allow the local community to provide their comments and concerns, if any, that would be relevant to granting or denying the application to the Commission. If such concerns are raised before the Commission, the applicant seeking the waiver would then have the burden of proving that the public interest will not be harmed by granting the waiver, and instead, make a showing that the local community would benefit through the grant of such application.

### **CONCLUSION**

NNA does not believe a single numerical cap on "voices" or a single market size is advisable in defining a modern waiver policy. Instead, the Commission should place the burden on the applicant seeking the waiver to demonstrate such action is in the public interest, after allowing the public an opportunity to comment. Failing a concrete demonstration that diversity would be diminished, the application should be granted. Additionally, the Commission should reexamine its definition of "diversity" in light of today's marketplace and the cornucopia of voices as the first step in the path to eliminating the cross ownership restriction for radio/daily newspaper ownership in its entirety as soon as practicable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tonda F. Rush', written over a horizontal line.

Tonda F. Rush  
President & CEO  
National Newspaper Association  
1525 Wilson Boulevard  
Suite 550  
Arlington, VA 22209

(703) 907-7900

**ATTACHMENT A**

**RESPONSE OF ROY J. EATON  
PUBLISHER,  
WISE COUNTY MESSENGER  
DECATUR, TEXAS**



WISE COUNTY  
**MESSENGER**

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January 27, 1997

**FAX MEMO TO:** Senny Boone  
National Newspaper Association

**FROM:** Roy J. Eaton, Chairman  
National Newspaper Association

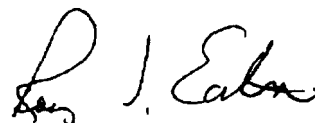
**RE:** Your Request for the FCC proceeding regarding cross-ownership

1. My name is Roy J. Eaton, Publisher of the *Wise County Messenger* in Decatur, Texas
2. The *Wise County Messenger* is published in Decatur, Texas in Wise County which is part of the 16 County Dallas-Fort Worth Area of Dominant Influence (ADI). Within this market there are two "grandfathered" cross ownership media organizations. Those include the *Fort Worth Star-Telegram* and Radio Station WBAP and *The Dallas Morning News* and WFAA-TV.
3. The *Wise County Messenger* is a twice-weekly newspaper with a paid circulation of 5,800. The newspaper was founded in Wise County, Texas in 1880. I have been the owner since 1973.
4. The *Fort Worth Star-Telegram* is a seven-day daily newspaper with an average circulation of more than 300,000 and *The Dallas Morning News* is a seven-day daily newspaper with a circulation of more than 500,000. Both newspapers have been in business for more than 75 years.
5. The Dallas-Fort Worth market is served by more than 50 different radio stations, many of them owned by the same companies (Infiniti, Sesquehana, Westinghouse/CBS, Capital Cities, etc) and most of them seem to be doing well. There are more than three-dozen other general interest newspapers in the Dallas-Fort Worth ADI and dozens of special interest newspaper publications.
6. All of the radio stations and newspapers compete fiercely for retail advertising. As far as I can determine there are no combined advertising programs between WBAP and the

*Fort Worth Star-Telegram* and *The Dallas Morning News* and WFAA-TV. We are in a position to know this because we create and place advertising for three of our community's automobile dealerships in the Dallas and Fort Worth metro markets. In more than 15 years, we have never been presented any "co-op" advertising opportunity involving the newspapers and radio or television stations.

7. There is plenty of diversity of editorial opinion between the commonly-owned *Fort Worth Star-Telegram* and WBAP radio station. In fact, there appears to be no connection or coordination of news coverage or editorial thought between the two. This is also true of the situation at *The Dallas Morning News* and WFAA-TV. In fact, there is strong competition between the organizations for news and sports coverage. As a general rule, neither WBAP or WFAA-TV have "editorials" per-se, although WBAP, being an "all-talk" radio station offers plenty of editorial diversity. With as many other daily and non-daily newspapers in the market, both of general interest and specialty publications there is a multitude of diverse editorial voices.
8. I do not feel that lifting the restriction against cross-ownership would have any effect at all in the marketplace.
9. I do not feel there would be any impact on my local community if the restriction was lifted.
10. I do not feel there would be any impact on the local advertising market if the restriction was lifted.
11. There would be no impact on the diversity of voices, opinion, culture, news stories, etc. in my local community if the restriction were lifted.
12. For more than a decade, I worked as a broadcast competitor to WBAP in Fort Worth, Texas. Even though they were commonly owned by the *Fort Worth Star-Telegram*, our small radio station was able to compete effectively in news coverage and for local advertising dollars with this media giant. There was a time, in the fifties and sixties, when the newspaper shared "carbon copies" of their news stories with the broadcast stations, but that situation had ended by the late sixties when I went to work for WBAP as news director. The "sharing of news stories" no longer exists and hasn't for the past 20 years.

Because the Dallas-Fort Worth ADI is one of the largest in the nation, the competition for news stories and advertising dollars between the very diverse media outlets - both print and broadcast - is strong. It is virtually impossible that this competition and diversity of voices would change should the restriction against cross ownership be lifted.



**ATTACHMENT B**

**RESPONSE OF JEFF M. DAVID  
PUBLISHER,  
DENHAM SPRINGS NEWS  
DENHAM SPRINGS, LOUISIANA**

**SUN** **DENHAM SPRINGS-LIVINGSTON PARISH** **THUR**  
**NEWS**  
P.O. BOX 1529, DENHAM SPRINGS, LOUISIANA 70727-1529  
(504) 645-5176

My name is Jeff M. David. I am owner of the Denham Springs Publishing Company, Inc., publishers of the Denham Springs News, a twice-weekly newspaper with a paid circulation of 10,000; the Livingston Parish Dispatch, a twice-weekly shopper with free circulation of 12,000; and the Livingston Leader, a once-weekly newspaper with a free circulation of 3,000. Our flagship publication, the Denham Springs News, will celebrate its 100th year of publication in 1998. I have been owner and publisher since 1977.

The market we serve is Livingston Parish, Louisiana, one of four parishes in the Metropolitan Statistical Area of Baton Rouge, Louisiana. Livingston Parish's population is approximately 75,000 of the MSA's 500,000 total population. Directly to the west of Livingston Parish, in East Baton Rouge Parish, some 360,000 people live. The metropolitan daily newspaper in East Baton Rouge Parish, the Advocate, is owned by the same family, the Manships, who also own VHF Channel 2, the ABC affiliate in this ADI. Until recently, the Manships also owned AM and FM radio stations licensed to Baton Rouge. The Manships were grandfathered when the prohibitions against daily newspaper ownership of broadcast were promulgated. The family ownership of the newspaper dates back to the early 20th century, and their ownership of the broadcast properties began shortly after World War II.

There exists one other financially sound newspaper in the MSA, the Gonzales Weekly, published in the parish directly south of East Baton Rouge, and there are at least a dozen commercially viable radio stations in the MSA. All existing cable TV facilities in the MSA are owned by TCI.


As far as I can tell from my vantage point, the Advocate and its sister businesses in broadcasting have been separately managed and have often competed for the same advertising dollar. In my opinion, the consolidation of ownership has not affected competition on the advertising side of the media business.

I do not personally believe that lifting the restrictions on newspaper ownership of broadcasting properties in the Baton Rouge MSA would rescue either a failing newspaper or a failing broadcast property. As a practical matter, the only impact I would expect at this point is a possible increase in value of local broadcast properties by introducing a possible new bidder, the newspaper, into the broadcasting business to a larger degree than already exists. In the long run, I would expect this condition to raise the price of advertising in the MSA since possible advertising outlets would be held in fewer hands.

The positive impact of the grandfathered Baton Rouge MSA over the years has been the ability of the Manship family to pool their media resources and to give the market higher quality products than might have otherwise existed.

Generally, I think the Manship family has worked hard to avoid operating in any way that would raise problems with the antitrust laws; because of this, other publications and broadcast properties have had a reasonable chance to find a niche in the market and be successful financially.

With regards to possible homogenization of editorial opinion, which in some instances I have observed, I believe a local public notice requirement would be advisable to allow interested members of the community to offer their concerns to the Federal Communications Commission before the waiver is granted.

A handwritten signature in black ink, appearing to read "Jeff David", written over a horizontal line.

Jeff M. David, Publisher

February 6, 1997

**ATTACHMENT C**

**RESPONSE OF AVIS TUCKER  
PRESIDENT & OWNER  
THE DAILY STAR JOURNAL  
WARRENSBURG, MISSOURI**

**&  
BROADCAST LICENSEE  
"KOKO"  
JOHNSON COUNTY, MISSOURI**

# The Daily Star-Journal

135 EAST MARKET STREET  
WARRENSBURG, MISSOURI 64093

MRS. AVIS G. TUCKER  
EDITOR AND PUBLISHER

February 7, 1997

1. My name is Avis G. Tucker  
President and Owner  
Star-Journal Publishing Co.  
Johnson County Broadcasters, Inc.

2. Newspaper (The Daily Star-Journal) market — Johnson County, Missouri and surrounding counties.

Existing due to grandfathering daily newspaper/radio combination is the status of The Daily Star-Journal and Johnson County Broadcasters (KOKO).

3. The Daily Star-Journal circulation — 5,100. KOKO programs for Johnson County, Mo., though it has listeners in adjoining counties. It reaches approximately 42,000 people.

The newspaper has been under Tucker ownership since 1947, Johnson County Broadcasters since 1960.

4. I am in control of the finances of each. I manage the newspaper and have a general manager for the radio station, who reports to me routinely on fiscal affairs. Executive decisions are made through mutual consultation. Administrative decisions are made by the general manager at the radio station, unless unusual circumstances arise and he contacts me for my opinion. He has complete independence in programming. Newspaper editorials are not aired.

5. There are three county weekly newspapers and the Kansas City Star comes into our market. There is one other commercial radio station and one cable company. As far as I know, they are financially sound and thriving.

6. The Daily Star-Journal and KOKO radio station compete. We have separate sales personnel, billing and accounting. No advertising is done in combination. Radio advertising carried in the newspaper is paid for by the station and vice versa.


7. The Daily Star-Journal carries editorial comments on local, state and national issues. The radio station rarely does editorial commentaries, though it is free to do so independently. The Daily Star-Journal is Johnson County's only daily newspaper and thus the only newspaper publishing current news stories.

8. I believe restrictions against cross-ownership should be lifted to provide possible opportunities to save a radio station or newspaper from failing. New ownership might provide know how for turning around a bad operation.

I see no hazards in lifting the restrictions.

9. There would be no impact in this community because the newspaper and radio station have operated as

10. Since the corporations operate separately, there would be no change in the local advertising market.
11. Diversity would not be threatened in our case since each has continued to operate independently.
12. I do not believe there have been any negative consequences due to the grandfathered situation. Perhaps a minor positive factor would be that in case of a breakdown at either one, news reporters could exchange information for its duration.



Avis G. Tucker  
February 7, 1997